

Emily Craiger (Bar No. 021728)
emily@theburgesslawgroup.com
THE BURGESS LAW GROUP
3131 East Camelback Road, Suite 224
Phoenix, Arizona 85016
Telephone: (602) 806-2100

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

By: Thomas P. Liddy (019384)
Joseph J. Branco (031474)
Joseph E. LaRue (031348)
Karen J. Hartman-Tellez (021121)
Deputy County Attorneys
MCAO Firm No. 0003200

CIVIL SERVICES DIVISION
225 West Madison St.
Phoenix, Arizona 85003
Telephone (602) 506-8541
Facsimile (602) 506-8567
liddy@ca-civilmail.mcaocounty.gov
brancoj@ca-civilmail.mcaocounty.gov
laruej@ca-civilmail.mcaocounty.gov
hartmank@ca-civilmail.mcaocounty.gov
ca-civilmail.mcaocounty.gov

Attorneys for the Defendant
Maricopa County Board of Supervisors

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kari Lake and Mark Finchem,

Plaintiffs,

vs.

Kathleen Hobbs, et al.,

Defendants.

No. 2:22-cv-00677-JJT

MARICOPA COUNTY DEFENDANTS'
REPLY IN SUPPORT OF RULE 11
AND 28 U.S.C. § 1927 MOTION FOR
SANCTIONS

(Honorable John J. Tuchi)

Defendants Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo in their official capacities as members of the Maricopa County Board of Supervisors (“the County”) respectfully reply in support of their motion (the “Motion”) for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1927. Plaintiffs’ Response in Opposition (the “Response”) further demonstrates the frivolous nature of this suit and sanctionable conduct on the part of Plaintiffs’ counsel. The Response regurgitates the same baseless allegations in the First Amended Complaint (“FAC”), and claims factual allegations in the FAC do not have their plain meaning. Moreover, the Response itself contains numerous misrepresentations, providing further bases for an award of sanctions.

I. Plaintiffs’ brought a frivolous lawsuit with no factual or legal basis in violation of Rule 11.

Rule 11 requires that before an attorney files a pleading, motion or other paper in court, the attorney must first determine that the allegations therein are supported by an objectively reasonable legal and factual basis. *Truesdell v. S. Cal. Permanente Med. Grp.*, 209 F.R.D. 169, 173 (C.D. Cal. 2002). Plaintiffs’ counsel did not meet their Rule 11 obligations.

a. Plaintiffs’ counsel knew or should have known there was no evidence to support the allegations in their FAC that Arizona voting systems are vulnerable to hacking and malicious manipulation.

The Response consists primarily of Plaintiffs restating the same erroneous factual assertions contained in the FAC and making conclusory statements that, for example, “Plaintiffs’ Complaint and Motion for Preliminary Injunction far surpass” the Rule 11 threshold. (Response at 3) As evidenced by this Court’s August 26, 2022, Order dismissing this case in its entirety, Plaintiffs’ conclusory statements are incorrect and insufficient to show they have met their Rule 11 obligations. (Doc. 100)

For instance, in dismissing this case, the Court found no factual basis for the allegations in the FAC that Arizona’s “electronic voting systems do not provide a secure, transparent, or reliable vote count.” (Response at 3, citing FAC paragraphs 71-89). The

1 Court made its determination based on publicly available information that is “*not subject*
2 *to reasonable dispute* pursuant to Fed. R. Evid. 201(b)(2).” (Doc. 100 at 7 n.5) Indeed,
3 the Court held there was no plausible basis for Plaintiffs’ claims that Arizona’s ballot
4 tabulation equipment is vulnerable to security failures. Specifically finding,

5 Defendants have taken numerous steps to ensure such security failures do not
6 exist or occur in Arizona or Maricopa County. As the Court chronicled in
7 painstaking detail in Section I.B., every vote cast can be tied to a paper ballot
8 (*see* A.R.S. §§ 16-442.01; § 16-446(B)(7); 2019 EPM at 80), voting devices
9 are not connected to the Internet (*see* Doc. 29, Ex. 6) any ports are blocked
10 with tamper evidence seals (*see* Tr. 177:5-20), and access to voting
11 equipment is limited (*see* Tr. at 179:15-20)

12 (*Id.* at 15 n.13)

13 Had Plaintiffs’ counsel engaged in the bare minimum Rule 11 factual and legal
14 investigation required, they would have come to the same conclusion. Thus, they either
15 failed to do so—or, they did the proper investigation, but improperly pursued their claims
16 anyway. Under either scenario, they have violated Rule 11.

17 Worse, County counsel raised these concerns with Plaintiffs’ counsel at the outset
18 of this case, in its May 20, 2022 correspondence, giving them ample opportunity to either
19 amend or withdraw the FAC. (Motion, Ex. 1, May 20, 2022, Correspondence) Among other
20 things, County’s counsel explained that it “disputes these unfounded assertions regarding
21 the unreliability of machine counting and that the Amended Complaint contains a single
22 plausible factual allegation that supports the existence of these vulnerabilities in Maricopa
23 County.” *Id.* The County also provided the link to the publicly available final report of the
24 Special Master arranged for by the Arizona Senate and Maricopa County that debunked
25 the baseless assertions in the FAC. *Id.* Nevertheless, Plaintiffs continued to pursue these
26 frivolous claims, wasting valuable time, taxpayer money and judicial resources. Plaintiffs’
27 counsels’ conduct violated Rule 11.
28

b. **Plaintiffs’ counsel knew or should have known there was no legal basis for their claims.**

Plaintiffs’ bizarre comparison of elections in Arizona to the Covid-19 pandemic further evidences their failure to do the bare minimum legal analysis before bringing their claims. (Response at 5) Specifically, they assert their baseless pleading in Federal Court is akin to a fictional “Cassandra” telling hospitals in Arizona to prepare to treat Covid-19 patients in Arizona in January of 2020. *Id.* As an initial matter, Defendants wonder, again, whether Plaintiffs have any communication at all with their own clients, in particular Mr. Finchem who has publicly questioned the existence of Covid-19. <https://www.cnn.com/2022/02/16/politics/trump-mark-finchem-arizona-secetary-state-kfile/index.html>.

But, more importantly, Plaintiffs’ statement, on page 5 of the Response, that they were not required to provide any evidence of ballot manipulation and they had sufficient basis to pursue their claims because, “an absence of undisputed evidence that a particular harm has happened before in a particular location does not prove that the harm cannot happen in the future, particularly where similar events have happened elsewhere” shows that Plaintiffs ignored the basic pleading standards necessary in Federal Court. *See e.g. Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (to meet the standing requirement a threatened injury must be “actual or imminent” and “certainly impending”, “allegations of possible future injury are not sufficient”). The most basic legal research concerning the threshold issue in any litigation – whether a party has standing - easily would have revealed that this theory of the case, based on pure conjecture and speculation, is insufficient to give Plaintiffs standing to pursue their claims in Federal Court. Plaintiffs’ counsel violated Rule 11.

II. Plaintiffs Cannot Rewrite the FAC Now.

In its Motion, Defendants identified three specific areas in which counsel for Plaintiffs asserted clearly erroneous facts: (1) that Arizona voters do not vote by hand on paper ballots. (FAC, ¶¶ 7, 58-60, 153). (2): that Arizona’s election equipment is not

1 independently tested by experts. (FAC, ¶¶ 20, 57, 69) and (3) that Arizona’s tabulation
2 results are not subject to vote-verifying audits. (FAC, ¶¶ 23, 72, 144-52.) Plaintiffs’
3 Response attempts to rewrite the FAC, asserting that words to do not have their plain
4 meaning. These misguided efforts are insufficient to overcome Rule 11 sanctions.

5 Indeed, Plaintiffs inexplicably assert that they knew all along that Arizona uses
6 paper ballots and the FAC “presumed” this fact. (Response at 8) A review of FAC
7 paragraph 153 alone belies this assertion; it states, “Plaintiffs seek for the Court to Order
8 (sic), an election conducted by paper ballots, as an alternative to the current framework.”
9 (FAC ¶ 153) This sentence could not be more clear. Further, if, in fact, Plaintiffs requested
10 relief - requiring paper ballots - that they knew already existed and was legally required in
11 Arizona, the County is hard-pressed to find a more frivolous claim for relief or larger waste
12 of judicial resources.

13 Plaintiffs also assert that the County unreasonably “read” into their request for an
14 order that Arizona’s election be “conducted by paper ballot”, an “inference that Arizona
15 does not currently use paper ballots”. (Response at 9) If that is the case then, evidently
16 (according to Plaintiffs’ theory) the Court is similarly unreasonable. Indeed, the Court’s
17 Order dismissing this case specifically addresses that “every Arizona voter casts a ballot
18 by hand on paper” and explains in detail that this is both currently required by Arizona law
19 and the practice in Arizona. (Doc. 11 at 8-9) Moreover in its Order dismissing this matter,
20 the Court states, “[i]n any event, insofar as Plaintiffs argue a constitutional violation
21 grounded in Arizona’s failure to require voting by paper ballots, there allegations are flatly
22 wrong...” (Doc. 100 at 17 n.15)

23 Plaintiffs also assert that their references to paper ballots in the FAC are
24 “immaterial” and that “immaterial discrep[an]cies” do not justify Rule 11 sanctions.
25 (Response at 8-9) As an initial matter, Plaintiffs cite to inapposite cases, none involving
26 election administration, from outside the 9th Circuit for this proposition.¹ *Id.* Nevertheless,

27 ¹ For instance, *Kiobel v. Millson*, 592 F. 3d 78 (2d. Cir. 2010) involved a factual error
28 regarding a party unintentionally adding \$3,000 to a damages figure at issue. The Court

1 even if this were the status of the law in the 9th Circuit, Plaintiffs’ allegations concerning
2 paper ballots are not “immaterial.” Arizona’s use of paper ballots is a critical component
3 of Arizona’s election administration because they “can be used in event of an audit.” (Doc.
4 100 at 8) Moreover, Plaintiffs heavily relied on *Curling v. Raffensperger*, No. 1:17-CV-
5 2989-AT (N.D. Ga. Feb. 3, 2022), throughout their pleadings, both the findings of the court
6 in that matter and the expert testimony provided by Professor J. Alex Halderman. But that
7 case hinged, in large part, on the fact that Georgia did not use paper ballots or have an
8 auditable paper trail. But, as the Court rightly pointed out, Professor Halderman clearly
9 indicated that a state could “eliminate or greatly mitigate” most of the risks and concerns
10 upon which he opined by the use of paper ballots, and “[t]his is already the practice in
11 Arizona.” (Doc. 100 at 8 n.7 (*citing Curling*, No. 1:17-CV-2989-AT (N.D. Ga. Feb. 3,
12 2022))). Plaintiffs did not inform the Court of this fact. Their failure to do so, coupled with
13 the way they chose to characterize the *Raffensperger* decision and the Halderman
14 declaration, constitute a material misrepresentation of law and fact that might have been
15 an attempt to mislead this Court.

16 Plaintiffs similarly assert that they never claimed Arizona does not test its machines
17 or audit its elections results. (Response at 8-9) They also attempt to re-write their FAC by
18 claiming that their allegation was only that Arizona’s election equipment is not tested by
19 neutral experts. But, as just one example, Paragraph 2 of the FAC states, “[t]he use of
20 untested and unverified voting machines violates the rights of Plaintiffs and their fellow
21 voters and office seekers, and it undermines public confidence in the validity of election
22 results.” The terms “untested” and “unverified” could not be more clear. Plaintiffs may
23 concede *now*, when facing a motion for sanctions, that the election equipment used by the
24 County and all the counties in Arizona undergo testing. But that is not what the FAC
25 alleged.

26
27
28

found it was an “isolated factual error” made in good faith, nothing like the numerous and
blatant misstatements at issue in this matter. *Id.* at 83.

Likewise as to Plaintiffs’ allegation that “[t]he recent hand count in Maricopa County, the second largest voting jurisdiction in the United States, offers Defendant Hobbs a proof-of-concept and a superior alternative to relying on corruptible electronic voting systems” (FAC, ¶ 155) Plaintiffs assert this is a “matter of judgment” and “superiority can – and should, here – be judged based on the transparency of a vote counting process, not merely the speed or cost.” (Response at 12) This nonsensical explanation has nothing to do with the actual allegations in Plaintiffs’ FAC or the claims they assert. Plaintiffs claimed that Arizona’s machine tabulation of ballots cannot be trusted to provide accurate election results and asserted the Cyber Ninjas “audit” proves hand counting is more accurate. But, this is incorrect and the Court found accordingly when it addressed Plaintiffs’ request for Preliminary Injunction via footnote. Specifically, the Court found,

Not only do Plaintiffs fail to produce any evidence that a full hand count would be more accurate, but a hand count would also require Maricopa County to hire 25,000 temporary staff and find two million square feet of space...”

(Doc 100 at 2 n.1).

III. Representations in the Response Alone Justify an Award of Sanctions.

Plaintiffs assert that “Maricopa does not dispute the legal theory behind Plaintiffs’ constitutional claims[.]” (Response at 4) This is patently false. Maricopa County moved for dismissal of this matter, on several bases, including Plaintiffs’ failure to allege a cognizable legal theory. Specifically, the County’s motion to dismiss separately addressed the absence of any legal basis for Plaintiffs’ “fundamental right to vote,” equal protection, § 1983, and § 2201 claims. (Doc. 27 at 14-19) The County also articulated its intended bases for requesting dismissal in its May 20, 2022, correspondence. (Motion, Ex. 1, May 20, 2022, Correspondence)

Plaintiffs’ Response also misrepresents the record in this matter. Plaintiffs assert that the specific harm they sought to prevent in the FAC “has specifically happened in Arizona before” claiming that Professor Walter Daugherity’s nonsensical report proves that there was “‘artificial control’ manipulation of ballots during the 2020 election in

1 Maricopa County.” (Response at 4) Plaintiffs falsely assert that “[n]one of the Defendants
2 provided any evidence whatsoever to contradict Daugherity’s analysis, leaving it
3 undisputed in the record.” *Id.* This is absolutely false.

4 First, Mr. Jarrett’s testimony along with the Maricopa County Defendants’ detailed
5 rebuttal to the Cyber Ninjas’ report entirely rebuts any allegation that any manipulation of
6 vote totals occurred in Maricopa County in 2020. In addition, all Defendants in this matter
7 moved to strike Daugherity’s testimony in its entirety because, among other reasons, “[h]is
8 methodology defies all explanation and logic, and Daugherity provides no evidence that it
9 has ever been subject to peer review or has any level of acceptance within the scientific
10 community.” (Doc. 74, Motion to Strike, at 7. *See also* Doc. 75, Maricopa County’s
11 Joinder) Further, as the Court pointed out in its Order, even Cyber Ninja’s own report, that
12 Plaintiffs offered into evidence, contradicts Daugherity’s alleged theory in finding,

13 [T]here were no substantial differences between the hand count of the ballots
14 provided and the official election canvass results for Maricopa County. This
15 is an important finding because the paper ballots are the best evidence of
16 voter intent and there is no reliable evidence that the paper ballots were altered
to any material degree.”

17 (Doc. 100 at 4 n.2 (*quoting Maricopa County Forensic Election Audit*, Volume I at 1-3).

18 **IV. Plaintiffs’ Counsel Violated Section 1927.**

19 Plaintiffs’ continued pursuit of its claims, long after the Maricopa County
20 Defendants’ counsel alerted them to their futility, violates Section 1927 and Plaintiffs offer
21 no reasonable basis for the Court to find otherwise. “Section 1927 authorizes the
22 imposition of sanctions against any lawyer who wrongfully proliferates litigation
23 proceedings once a case has commenced.” *Pacific Harbor Capital, Inc. v. Carnival Air*
24 *Lines, Inc.*, 210 F.3d 1112, 1117 (9th Cir. 2000).

25 In particular, Plaintiffs violated Section 1927 when they moved for injunctive relief
26 after the County clearly alerted them, especially in its May 20, 2022 correspondence and
27 also its Motion to Dismiss, to the fact that there was no legal basis and, even if there was,
28 the *Purcell* principle barred an injunction in this matter. (Motion, Ex. 1, May 20, 2022,

1 Correspondence). This Court agreed, finding Plaintiffs could not meet a single *Winter*
2 factor and their request was barred by *Purcell*. (Doc. 100 at 2 n.1 and 18-20)

3 Plaintiffs' improper conduct forced the Court to hold a lengthy preliminary
4 injunction hearing that wasted judicial resources. Most troubling is that Plaintiffs, their
5 financial backer, Michael Lindell, and their counsel attempted to use this hearing as a
6 further effort to promote their disinformation campaign about Arizona elections and
7 election integrity. Sadly, this resulted in the County's witness and counsel being confronted
8 upon exiting the courtroom by someone who had watched the proceedings, who called
9 them "liars" and "traitors." These events were subsequently posted on the internet,
10 furthering this false narrative that the election equipment and results cannot be trusted.
11 [https://rumble.com/v1dip13-no-evidence-of-election-fraud-gail-golec-challenges-](https://rumble.com/v1dip13-no-evidence-of-election-fraud-gail-golec-challenges-attorneys.html)
12 [attorneys.html](https://rumble.com/v1dip13-no-evidence-of-election-fraud-gail-golec-challenges-attorneys.html). The video shows that Mr. Lindell participated in these verbal attacks. This
13 likely would not have happened had Plaintiffs and their counsel not filed a baseless lawsuit
14 alleging nonexistent problems with Arizona's election equipment. This is just one example
15 of the unfortunate and detrimental consequences of attorneys violating their Rule 11
16 obligations and filing baseless and frivolous lawsuits concerning election integrity.
17 Attorneys must be held to a higher standard.

18 **V. Conclusion**

19 Plaintiffs' counsel has shown a pattern of improper conduct throughout this
20 litigation. As addressed above and in the Motion, they have continued to pursue baseless
21 and frivolous claims and sought injunctive relief that was time-barred. In addition, as the
22 Court pointed out in its Order, Plaintiffs falsely asserted in open court that they were not
23 asserting claims based on state law when the FAC repeatedly made such allegations. (Doc.
24 100 at 18 n.16) Further, they engaged in "potential gamesmanship" by requesting to
25 supplement the record after the hearing in this matter. (*Id.* at 21 n.17) For these reasons,
26 pursuant to Rule 11 and Section 1927, the County seeks its reasonable attorneys' fees
27 incurred from the date that Plaintiffs filed the First Amended Complaint up until the
28 Court's ruling on the present motion, or in an amount the Court deems sufficient "to deter

1 repetition of such conduct or comparable conduct by others similarly situated.” Fed R. Civ.
2 P. 11(c)(4).

3
4 RESPECTFULLY SUBMITTED this 31st day of August, 2022.

5
6 THE BURGESS LAW GROUP

7 BY: /s/ Emily Craiger
8 Emily Craiger

9
10 RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

11 BY: Thomas P. Liddy
12 Joseph J. Branco
13 Joseph E. La Rue
14 Karen J. Hartman-Tellez
Deputy County Attorneys

15
16 *Attorneys for the Defendant*
17 *Maricopa County Board of Supervisors*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on August 31, 2022, I electronically transmitted the
20 foregoing document to the following:

21 Alan M Dershowitz
22 Harvard Law School
23 1575 Massachusetts Ave.
Cambridge, MA 02138
dersh@law.harvard.edu
alandersh@gmail.com

24 Andrew D Parker
25 Jesse Hersch Kibort
26 Parker Daniels Kibort LLC
123 N 3rd St., Ste. 888
Minneapolis, MN 55401
parker@parkerdk.com
27 kibort@parkerdk.com
28

1 Kurt B Olsen
2 Olsen Law PC
3 1250 Connecticut Ave. NW, Ste. 200
4 Washington, DC 20036
5 ko@olsenlawpc.com

6 Christine Bass
7 States United Democracy Center - Los Angeles, CA
8 506 S Spring St., Ste. 13308
9 Los Angeles, CA 90013
10 christinebass@statesuniteddemocracy.org

11 David Andrew Gaona
12 Kristen Michelle Yost
13 Roonali H Desai
14 Connersmith Brockelman PLC
15 2800 N Central Ave., Ste. 1900
16 Phoenix, AZ 85004
17 Agaona@cblawvers.com
18 kvost@cblawvers.com
19 rdesai@cblawyers.com

20 Sambo Dul
21 States United Democracy Center
22 8205 South Priest Dr., Ste. #10312
23 Tempe, AZ 85284
24 480-253-9651
25 bo@statesuniteddemocracy.org

26 Daniel S Jurkowitz
27 Pima County Attorneys Office
28 32 N Stone Ave., Ste. 2100
Tucson, AZ 85701
Daniel.Jurkowitz@pcao.pima.gov

Michael Kielsky
Davillier Law Group LLC
4105 N 20th St., Ste. 110
Phoenix, AZ 85016
MK@USazLaw.com

/s/ Dana N. Troy